

APPEAL NO. 040408  
FILED APRIL 7, 2004

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing was held on January 26, 2004. The hearing officer determined that the appellant (claimant) did not sustain a compensable injury on \_\_\_\_\_, and that she therefore did not have disability. The claimant appealed the hearing officer's injury and disability determinations on sufficiency of the evidence grounds. The respondent (carrier) responded, urging affirmance.

DECISION

Reversed and remanded.

The claimant testified that she sustained the injury, which makes the basis of this claim, at approximately 7:30 or 8:00 on the morning of \_\_\_\_\_. The claimant testified that she had bent over to clean up some water and other items, which a patient had knocked to the floor. As she rose from her bent over position, the claimant testified that she felt a sharp pain in her back and leg. The claimant testified that she reported the injury; continued to work her shift; and was sent to the emergency room by her supervisor due to her back pain at approximately 2:00 p.m. that same day. The claimant denied that her back was bothering her prior to the above-described incident, and further denied that she had told her supervisor that her back was bothering her when she arrived at work on \_\_\_\_\_. The claimant's supervisor testified that the claimant had told her that her back was hurting as they walked into work together on the morning of \_\_\_\_\_. The supervisor further testified that at approximately 3:00 or 4:00 that afternoon, she saw the claimant bending over to pick up a pen; that the claimant said her back hurt; that she sent the claimant to the emergency room at that point; and that the claimant did not mention having injured her back while assisting a patient earlier that morning.

In determining that the claimant did not sustain a compensable injury, and therefore did not have disability, the hearing officer stated:

The claimant's account of the injury incident is not consistent with the emergency room record generated on the same day as the alleged injury; that record is, in fact, consistent with the account of the supervisor, [Mr. S], who testified that the claimant was complaining of back pain before starting work that morning and never mentioned an incident such as the one described at the hearing.... Although two injury reports were apparently filled out in response to the claimed incident, neither was offered into evidence here.

The \_\_\_\_\_, emergency room report referenced by the hearing officer is in evidence. The report indicates that the claimant arrived at the emergency room at 2:27 p.m. on \_\_\_\_\_, complaining of low back pain. A notation on the report indicates that at 7:30 a.m. on \_\_\_\_\_, the claimant had bent over and when she got up she felt a sharp pain down her right leg. The claimant was diagnosed with a lumbar strain. We additionally note that the first page of Claimant's Exhibit No. 5 is an undated document entitled Supervisor's Accident Report.

We reverse the hearing officer's determination that the claimant did not sustain a compensable injury and therefore did not have disability, and remand for reconsideration because of the above-quoted statements in the hearing officer's Statement of the Evidence. Our review of the \_\_\_\_\_, emergency room report does not appear to be in conflict with the claimant's testimony at the hearing, and the hearing officer failed to explain why he found it to be so. Likewise, it does not appear to be consistent with the claimant's supervisor's testimony. Additionally, there is an accident report from the employer in evidence, yet the hearing officer stated there was none. Because of the above, we are concerned that the entire record was not reviewed in this matter. On remand, the hearing officer is directed to review all of the evidence in the record, and to specifically explain his rationale in reaching his determination.

We reverse the hearing officer's decision and order and remand for reconsideration of the decision. Pending resolution of the remand, a final decision has not been made in this case. However, since reversal and remand necessitate the issuance of a new decision and order by the hearing officer, a party who wishes to appeal from such new decision must file a request for review not later than 15 days after the date on which such new decision is received from the Texas Workers' Compensation Commission's Division of Hearings, pursuant to Section 410.202 which was amended June 17, 2001, to exclude Saturdays and Sundays and holidays listed in Section 662.003 of the Texas Government Code in the computation of the 15-day appeal and response periods. See Texas Workers' Compensation Commission Appeal No. 92642, decided January 20, 1993.

The true corporate name of the insurance carrier is **TRAVELERS INDEMNITY COMPANY** and the name and address of its registered agent for service of process is

**CT CORPORATION SYSTEM  
350 NORTH ST. PAUL STREET  
DALLAS, TEXAS 75201.**

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Daniel R. Barry  
Appeals Judge

CONCUR:

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Judy L. S. Barnes  
Appeals Judge

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Chris Cowan  
Appeals Judge